



R.C.C. No.151/2023
Abdul Said ..V/s. .State

ORDER BELOW EXH-1
(Passed on 09th January, 2024)

Vide section 457 R/W section 451 the applicant is claiming the interim custody of the vehicle i.e **Model Mahendra and Mahendra MH-27 L-9284, Chassis No. ENBOW1098, Engine No. ENBOW1098, and Trolley/trailer bearing registration number MH. 30 J. 3023 Chassis No. MH 30 VT 162011 Model Vishvkarma Agro Industries respectively** (hereinafter be called “Tractor & trolley”) alleged to be seized by P.S. Hiwarkhed in crime 313/2023 in offences punishable under section 379 r/w 34 of the India Penal Code 1860.

2. The applicant contended that he is the possessor of tractor and trolley. It is asserted that the said tractor and trolley is used by him for the purpose of agriculture and labour. The tractor and trolley is kept in open yard of police station and if it will not release then the same may junk day by day. Further, it is contended that if the interim custody is given to the applicants, then he will abide all terms and conditions which will be imposed on him. Hence, the applicant prayed the interim custody of the “Tractor & trolley.

3. The charge sheet in the case is filed therefore the say of I. O is not called. The learned A P P has filed his say submitted that the “Tractor & trolley involved in the commission of transportation of sand illegally and therefore the say of Tahsildar is required for deciding the application. Furthermore he submitted that the tractor and trolley may be warranted at the time of trial. According to him if “Tractor & trolley is released he may use it again in the offence of same nature. Hence, prayed to reject the application.

4. The say of Tahsildar is called on and he submitted that in proceeding the fine has been imposed in connection with this offence which is yet not deposited and fine amount is to be recovered and he therefore prayed to withhold the custody of tractor and trolley.

5. Heard counsel for both the sides.

6. The following points arise for my determination. I have recorded my findings alongwith the reasons thereof.

Sr.No	Points	Findings
1.	Whether the applicant/accused is entitled for the interim custody of the tractor and trolley ?	--Yes--
2.	What order?	Allowed

REASONS.

As to point No.1:

7. It is pertinent to note here that the said Tractor and Trolley was found transporting the minor minerals that is sand. Though the Tractor and Trolley have been intercepted in the above offence still the question that comes here for determination is whether at such prima facie stage can the vehicle order to be kept in custody of police. At this juncture the emphasize needs to be given to the ration laid down by the Hon`ble Apex Court in the case of **Sunderabhai Desai-v/s- state of Gujarat reported in A.I.R. 2003 S.C. 638 wherein it is observed that it is of no use to keep the seized vehicle in police station for long time. It would be appropriate to order release of vehicles on demand of furnishing appropriate bond security and guarantee.**

8- In view of supra citation it becomes clear that the vehicle can not be kept in custody of the police awaiting the termination of trial therefore the contention of the Tahsildar for with holding the custody can not be entertained. In order to substantiate the entitlement the applicant has filed the registration certificate of Tractor and trolley which reflects that said Tractor and Trolley are standing registered in the name of two different persons. What the record shows is that the applicant is array as accused in

the crime and furthermore, the documents annexed with the charge sheet the accused/applicant has purchased the Tractor and Trolley from those persons in whose name the registration certificate issued by the R. T. O. is standing. Under Section 451 it is always the entitlement which arises as a factor of determination. The entitlement of may be either on the basis of ownership or on the basis of possession. Though the registration certificate are standing in name of those persons but when the document of title is executed by them is sufficient for passing the title under the sale of goods Act. In such circumstances the accused hold good title to the Tractor and Trolley . Moreover the applicant is the accused in the offence and according to the charge sheet he has been found transporting the sand illegally. Resultantly there is no legal hurdle to grant the interim custody of Tractor and Trolley.

9. Furthermore, so far as the inquiry by the Tahsildar in an offence is concerned it appears from the say that the fine has been imposed in said proceeding and the same is to be recovered. It is always desirable and warranted by law that the cognizance of such parallel proceeding requires to be taken by the Magistrate. Though pendency of such proceeding do not imposed and embargo for exercising the jurisdiction by the magistrate under section 451 of the code 1973 however as illegal excavation and transportation of minor minerals are rising day by day the law expect that the fine amount should be deposited with the revenue authority. In the instant case the charge sheet has been filed as per the say of Tahsildar the amount of fine has been imposed but the proceeding of recovery is still pending. Henceforth, I am of the considered opinion that until such fine amount deposited by the applicant/accused the vehicle shall not be released.

ORDER.

- i. The application is hereby allowed subject to following conditions.
 - a. **Model Mahendra and Mahendra MH-27 L-9284, Chassis No. ENBOW1098, Engine No. ENBOW1098, ,** be returned to the

applicant/accused namely Abdul Said Abdul Samir, on his executing indemnity bond of Rs 10,00,000/- (Rs. Ten lakh Only).

- b. **Trolley/trailer bearing registration number MH. 30 J. 3023 Chassis No. MH 30 VT 162011 Model Vishvkarma Agro Industries** be returned to the applicant namely Abdul Said Abdul Samir on his executing indemnity bond of Rs 3,50,000/- (Rs. Three Lakh Fifty Thousand Only).
- c. The above Trolley and tractor shall not be released until the fine amount is deposited by the applicant/accused before the revenue authority and after such receipt being shown to the concern I. O. the vehicle be released.
- d. He shall produce the "Tractor & trolley as and when directed by the court.
- e. He shall not alienate or create any third-party interest on "Tractor & trolley till the termination of trial.
- f. He shall not use the "Tractor & trolley in commission of any offence.
- g. He shall not change the nature of the "Tractor & trolley. The applicant to preserve and maintained the trolley.
- h. In the event of failure to abide by the above conditions the applicants respectively shall be liable to pay Rs.10,50,000/- (Rs. Ten lac Fifty Thousand only).
- ii. Before handing over "Tractor & trolley to the applicant/accused the concerned P.S. shall verify the documents and take the photographs of "Tractor & trolley at the expenses of the applicant/accused and to produce the photographs.
- iii. The concerned PS is hereby directed to prepare detail panchnama at the time of delivering the "Tractor & trolley.
- iv. The applicant/accused before taking possession shall furnish the insurance policy of the "Tractor & trolley and the PS. directed to verify the same.

- v. The Panchnama and photographs shall attach with the Charges-sheet.
- vi. This order and bond shall be kept with the charge-sheet.
- vii. This order pertains to only to the vehicle and not in regards to any mines and minerals if any.
- viii. Issue writ to the concerned police station.

Sd-

Telhara
Date 09.01.2024

(R. A. Rannaware)
Judicial Magistrate First Class,
Jt. Court, Telhara

Certificate

I affirm that the contents of this P.D.F. file are same word for word as per original .

Name of Stenographer	: Ku. M. V.Bahal
Court Name	: Jt.C.J.J.D. & J.M.F.C.,Telhara
Date	: 09.01.2024
Signed by presiding officer on	: 09.01.2024
Uploaded on	: 10.01.2024